IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.169 OF 2006
IN
NOTICE OF MOTION NO.3525 OF 1999 IN SUIT NO.5739 OF 1999

Shri. B.M.Gupta. ...Plaintiff.
Vs.
S.M. Gupta and ors. ...Defendants.
And
U.S.Gupta and ors. ...Respondents.

Mr. Bhavin Bhatia i/by Bipin Joshi for the plaintiff.
Mr. Mukadam Nair i/by G.S.Bhat for the Respondent.

CORAM : R.S. MOHITE, J.
DATED : 21/11/2006.

P.C.

1. The plaintiff has taken out this chamber summons for bringing the heirs of deceased defendant No.1 on record. It appears that the deceased defendant No.1 died on 5.6.2003. On 4.8.2003 The Advocate for the plaintiff wrote a letter to the Advocate for the defendant No.1 placing on record the factum of death. The letter also mentions the names of heirs of the deceased defendant No.1 and called upon the advocate for the defendant No.1 to confirm the names within three days failing which plaintiff will proceed to file an application for bringing heirs on record. It is however, clear that the chamber summons is filed after delay of 973-days. It is now sought to be contended that the address of the heirs were not known. The Advocate for the plaintiff states

that his client is 91 years of age and is unable to attend the litigation due to his old age. It appears that even the affidavit in support of the chamber summons is filed through a Constituted Attorney who is grand son of the plaintiff. Taking an over all view of the matter and also taking into account the fact that the suit is for partition between the brothers, by imposing exemplary costs, the chamber summons is allowed in terms of prayer clause (a) and (b) subject to payment of costs of Rs.10,000/- which will be payable by the plaintiff within a period of four weeks from today. The costs deposited in this court will be treated as costs in the suit.

(R.S.MOHITE, J.)